

The District of Columbia Council Passes Its Own Wage Theft Prevention Amendment Act

Alfred B. Robinson, Jr. and Joleen R. Okun | February 26, 2015

The Council of the District of Columbia passed the Wage Theft Prevention Amendment Act (WTPAA) of 2014 which then mayor Vincent C. Gray signed in September 2014. Pursuant to the District of Columbia Home Rule Act, this legislation is now under congressional review. This review process is beneficial in this instance because the 2014 WTPAA creates new burdens for employers and enhances the prospects for employee litigation, and it has created confusion or unintended consequences for all concerned. It is important to note that the anticipated date that the 2014 WTPAA becomes effective is February 26, 2015; however, even the District of Columbia's (D.C.) Department of Employment Services concedes this date could change. Here are several key features to the bill that local employers should keep in mind.

Interplay with other laws. First, the 2014 WTPAA amends or supplements several existing D.C. laws, including the Living Wage Act, Minimum Wage Act Revision Act, and the Accrued Sick and Safe Leave Act. Thus, the bill not only is targeted to prevent wage theft, but it reaches into other D.C. laws, including wage and hour and leave laws.

The bill also includes a number of substantive provisions that impose additional burdens on employers. Some of these provisions are in a state of flux, and a few aspects of the legislation call into question the intent of the D.C. Council.

Notices. Section 3 of the 2014 WTPAA amends the D.C. Minimum Wage Act Revision Act and will require covered employers to provide written notices to new hires and to all current employees—in both English and the employee's native language (where applicable). These employee notices should include the following information:

1. the employer's name and any "doing business as names" that the employer uses;
2. the physical address of the employer's principal place of business or main office and its mailing address if different;
3. the employer's telephone number;
4. the employee's rate of pay and its basis, such as an hourly amount, day rate, shift rate, weekly amount, salary amount, piece rate, commission, overtime rate of pay, and any applicable exemptions from overtime; and
5. the regular payday for the employee.

Once the 2014 WTPAA becomes effective, employers are permitted 90 days to provide the required notices to current employees and the D.C. government is charged with preparing a sample template within 60 days. The 2014 WTPAA also requires employers to provide current employees a new notice when any of the required information changes. There is a variation of this notice provision that applies to temporary staffing firms.

Recordkeeping. Another provision of section 3 of the 2014 WTPAA transforms an employer's obligation to maintain records of the hours worked by an employee each day and each workweek. Under the new law, employers will be required to keep records of the "precise time worked" by any non-exempt employees. However, the bill fails to provide any guidance as to what "precise time" means.

Additionally, the 2014 Wage Theft Act amends recordkeeping requirements for the D.C. Accrued Sick and Safety Leave Act of 2008. Employers must keep not only records of an employee's hours worked, but also the amount of paid leave taken by each employee.

These records must be maintained for at least three years and kept for both exempt and non-exempt employees.

Enforcement fund. Section 2 of the 2014 WTPAA establishes a “Wage Theft Protection Fund” to enforce the legislation as well as the minimum wage, living wage, and sick and safe leave laws. It is funded by fines and administrative penalties for violations of the Living Wage Act, Accrued Sick and Safe Leave Act, and the 2014 WTPAA that are increased in the new legislation.

Posting. The Act maintains the requirement that employers post a copy or summary of the Act. Within 60 days of the Act’s effective date, the Mayor’s office will provide employers with a copy or summary of the Act to post on the employer’s premises.

Failure to comply. The Act not only modifies employers’ recordkeeping obligations, it changes the consequences for employers that fail to comply with the new requirements. Failure to comply with the notice, recordkeeping, or posting requirements of the Act could result in the tolling of the three-year statute of limitations (i.e., the statute of limitations would not begin to run) typically applicable to wage claims until the employer complies with the requirements.

The Act allows aggrieved employees to pursue a retaliation claim either in a civil action or within an administrative proceeding., An act establishes a rebuttable presumption—for situations in which an employer takes adverse action against an employee within 90 days of the employee engaging in an activity protected by the Act—that the employer retaliated against the employee due to the employee’s protected activity.

Related Measures

The 2014 WTPAA has created confusion and unintended consequences, even for Council of the District of Columbia. As evidence of this confusion the Council has introduced a number of measures to clarify the Act, a couple of which have passed. One such measure is the Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2014, which was enacted and signed by new Mayor Muriel Bowser in January of 2015 and which is currently under congressional review.

The 2014 Temporary Amendment Act is a follow-up to the Wage Theft Prevention Correction and Clarification Emergency Amendment Act of 2014, which the Council enacted in December of 2014. The enactment of the 2014 Emergency Amendment Act was accompanied by approval of the Wage Theft Correction and Clarification Emergency Declaration Resolution of 2014. Finally, the D.C. Council passed the Wage Theft Prevention Clarification Emergency Amendment Act of 2015 earlier this month and it is currently under review by the mayor. The 2015 Emergency Amendment Act was accompanied also by passage of the Wage Theft Prevention Clarification Emergency Declaration Resolution of 2015. Last but not least is the Wage Theft Prevention Clarification Temporary Amendment Act of 2015.

Notwithstanding the additional confusion created by the various temporary or emergency correction and/or clarification measures, the goal is to clarify the 2014 WTPAA as follows:

- The requirement to track the precise time worked does not apply to exempt employees.
- The employer notice need only be in English unless and until the D.C. government provides a sample template in an employee’s primary language.
- The requirement to pay employees at least twice per month would not apply to exempt employers who can be paid at least once per month.

Unless there is congressional action, the 2014 WTPAA should become law on February 26, 2015, so employers with employees in the District of Columbia (regardless of where the employer is located) should evaluate this law and implement actions to come into compliance with its various provisions. As the Office of the Mayor or Department of Employment Services issue guidance, we will issue further updates because there are still a number of unanswered questions.

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